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IN THE MATTER OF ARBITRATION

between

General Drivers, Dairy Employees,
Warehousemen, Helpers & Inside
Employees Local Union No. 346,
Duluth, Minnesota

-and-

Douglas County (Sheriff's
Department), Superior, Wisconsin

))

COMPULSORY FINAL OFFER
INTEREST ARBITRATION 1983

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Case CXIII No. 31456
MIA-775
Decision No. 20765-A

December 22, 1983

APPEARANCES

For General Drivers Union Local No. 346

Scott D. Soldon, Attorney, Goldberg, Previant, Uelman, Gratz,
Miller & Brueggeman, S.C., Milwaukee, Wisconsin
Roy Niemi, Business Representative
Greg Guenard, Steward
Joseph P. Watut, Jailer
Larry McDonald, Deputy
Jim Johnstone, Deputy
David Abrahamson, Deputy
Lucille Zukowski, Matron
Patricia J. Smith, Matron
Natalie Dahl, Matron
Joan B. Izzard, Matron

For Douglas County (Sheriff's Department)

William R. Sample, Representative, Industrial Relations Council,
Duluth, Minnesota
Larry Kroll, Comptroller
Robert Kallstrom, County Board Member
George R. Wallace, County Board Member
Richard A. Lindberg, Undersheriff

JURISDICTION OF ARBITRATOR

On April 19, 1983, the General Drivers, Dairy Employees,
Warehousemen, Helpers & Inside Employees Local Union No. 346
(hereinafter referred to as "Union") filed a petition with the
Wisconsin Employment Relations Commission requesting the Commission
to initiate compulsory final and binding arbitration pursuant to
Section 111.77(3) of the Municipal Employment Relations Act, with
regard to an impasse existing between the Union and Douglas County
(Sheriff's Department)(hereinafter referred to as "County") over
the limited reopener for the year 1983 covering wages and health
and welfare for law enforcement personnel in the employ of said
County; that an investigation having been conducted on February
21 and June 9, 1983, by Robert M. McCormick, a member of the
Commission's staff; and that said Investigator advised the Commission
on June 16, 1983, that the Parties are at impasse on the existing
issues as outlined in their final offers transmitted along with
said advice and that said Investigator has closed the investigation
on that basis.

The Commission having on June 22, 1983, issued an Order that compulsory final offer arbitration be initiated for the purpose of issuing a final and binding award to resolve an impasse arising in collective bargaining between the Parties on matters affecting wages, hours and conditions of employment of non-supervisory law enforcement personnel in the employ of the County; and on the same date the Commission having furnished the Parties a panel of arbitrators from which they could select a sole arbitrator to issue a final and binding award in the matter; and the Parties having advised the Commission that they had chosen Richard John Miller, New Hope, Minnesota, as the arbitrator.

The arbitration hearing convened on Thursday, November 3, 1983, at 9:00 in the Douglas County Courthouse, Superior, Wisconsin. Following receipt of positions, contentions and evidence, the Parties filed post hearing briefs, which were received on December 7, 1983, after which the hearing was considered closed.

POSITIONS OF THE PARTIES

There are two issues at impasse, since the Parties agreed in their final positions (Joint Exhibits #1 and #2) that the duration of the contract shall be for one year (January 1, 1983 to December 31, 1983). They involve wages and health insurance. The final offers of the Parties are as follows:

Wages

County Final Offer: Wages at December 31, 1982, levels except for matron employees whose wages shall be at the January 1, 1983 level.

Union Final Offer: 4% across the board on base pay, retroactive to January 1, 1983. The matron employees shall receive an additional \$.25 per hour increase payable after the 4% across-the-board increase, retroactive to January 1, 1983.

Insurance

County Final Offer: Fringe benefits at December 31, 1982 levels.

Union Final Offer: The County will pay the full cost of the single health and \$3000.00 life insurance plan and the full cost of the family plan, with the exception of a maximum of \$11.87 which the employees will contribute. Any deduction in excess of the \$11.87 per month from the employees during the period of January 1, 1983 to December 31, 1983, shall be repaid to the employees.

ANALYSIS OF THE EVIDENCE

Wisconsin Statute 111.77(6) sets forth the criteria which the arbitrator must consider in determining which final offer is more reasonable. It reads as follows:

"(6) In reaching a decision the arbitrator shall give weight to the following factors:

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

"(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.
2. In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

Article 44, Section 6 of the 1982-83 collective bargaining agreement (Joint Exhibit #3) states that as of January 1, 1983, the agreement may be reopened by either party for the purpose of negotiations on Article 23, Health and Welfare and Appendix A, Wages.

The Parties' final position reflects that limited reopener clause. The Union's final offer seeks a 4% across-the-board wage increase retroactive to January 1, 1983, an additional \$.25 per hour for matrons who work in the jail retroactive to January 1, 1983; and that the County should pay the full cost of the single health and \$3,000 life insurance plan and the full cost of the family plan except that employees shall pay \$11.87 per month.

The County's final offer seeks a wage and fringe benefit freeze. The net effect of this position will be that Union employees will absorb any increases in health insurance while not receiving any wage increase.

The Union represents employees classified as deputies, lieutenants, juvenile officers, sergeants, jailers, chief jailers, jailer's aides and on-call matrons. There are approximately 34 employees covered under the expired collective bargaining agreement (Joint Exhibit #4).

The County contends that due to its "bad financial condition" the arbitrator must reject the Union's position. This statement clearly indicates that the arbitrator must give paramount consideration to those factors under the statute that relate to the ability of the County to fund the Union's offer.

County Exhibit #1 shows on page 3 that 2,590 jobs were lost in the County since 1980. Of those jobs lost, 663 were in the City of Superior. Most of these jobs were lost as a result of less harbor activity in the shipments of iron ore and grain. Page 4 of the Exhibit shows that Douglas County ranks first in the number of unemployed in 1980 in comparison to Portage, Ashland, Bayfield, Price, Burnett, Sawyer and Washburn Counties. Douglas County ranked second in

1981 with only Portage County ranking higher. The decline was even greater in the civilian labor force with Douglas County ranking first in both years. In fact, unemployment was so high in 1981-82 that Douglas County was designated for "Labor Surplus" by the Department of Labor, which entitled Douglas County employers to receive preferential treatment in obtaining federal procurement contracts. Page 9 of the Exhibit discloses that Douglas County tax receivables for 1983 should be less than one-half of the budgeted amount. The adjusted gross income and adjusted per capita income shown on page 10 are substantially below the state averages for other counties. Page 11 shows how much the City of Superior pays for gross county tax rates for 1982, tax collectible in 1983, but does not indicate the impact on rural taxpayers or surrounding counties. Page 14 indicates that the percentage of total costs for year 1983 with all fringe benefits as compared to 1982 total costs for only wages and health insurance shows a 5.44% increase. Obviously, this is not a valid comparison, since it makes the total package cost of the Union's offer much higher than if the 1982 total costs included all fringe benefits.

County Exhibit #2 again shows that unemployment is on the increase during the month of August, 1983.

County Exhibit #3 shows that non-union personnel in Douglas County received no wage increase for 1983 but 7% for 1984. This Exhibit further states that "Douglas County did not budget any funds for wage increases in 1983 and all unions were advised that layoffs would result if wage increases were negotiated." In fact, the Douglas County Highway Department represented by the same Union, and the one they represent at one of the County Nursing Homes, accepted a consent award, which resulted in no wage increase in the year 1983, but did result in a payment in lieu of wage increase of \$400 paid on December 30, 1983. The remainder of the award shows that in 1984, these employees shall receive a 7% increase in 1982 wage rates and an increase in health insurance benefits. Layoffs did occur in these departments and where other unions negotiated the same settlement terms because of the Douglas County Board resolution.

County Exhibits #4 and #5 show the real impact of County Exhibit #1. In year 1983, the County started with a deficit of \$934,000 and it will not be collecting approximately \$1,200,000 of taxes due in 1983.

County Exhibit #6 shows the budget summary of expenditures and revenue for the Sheriff's Department. The County contends that all areas within the budget, as shown by the Exhibit, either break even or expenditures exceed revenues. This statement is somewhat misleading in that on page 1 of the Exhibit, the County is approximately \$40,000 behind what it thought it would spend during 1983 without any wage increases costed into that total (1983 budget shows \$1,403,873 compared to 1983 estimated total of \$1,362,674). Page 2 of that Exhibit shows that the 1983 budget for personnel services for the Sheriff's Department is \$691,373 and a 1983 estimated total without any wage increase of \$649,592. According to County Exhibit #1, page 15, the Union's requested wage and fringe benefit increases amount to an increased cost of approximately 4.26%. If we multiply 4.26% times the 1983 estimated total for personnel services and add that to the estimated total, it will still be under the 1983 budgeted figure. Thus, even under the County's figures, it would not have to raise taxes to meet its budgeted amounts. This is due in part to three bargaining unit positions being lost in the last two years through attrition and more importantly, according to Union Witness, Sergeant Guenard, the County has saved over \$50,000 in personnel costs during 1983 alone by not replacing deputies who are missing for given shifts. Both of these factors have increased the workload of the deputies substantially.

The testimony of County Comptroller Larry Kroll was that during 1983 the County could not secure a loan to cover its deficit as the County was at levy limits set by the state, and state law provides that any loan received by a governmental agency must be guaranteed by a portion of the levy. Under cross-examination by the Union attorney, Mr. Kroll, however, testified that the levy limits are not currently in effect. Thus, it appears that the County has the ability to generate more revenue by increasing the levy limits. Mr. Kroll had no idea whatsoever how much of a levy limit increase would be needed to raise \$34,000, which is the estimated cost of the Union's proposal (County Exhibit #1, page 14). Nor could he ascertain the increase on the average property taxpayer in Douglas County. If, as Mr. Kroll testified, the County collected about 17 million dollars in 1983, the average taxes needed to increase by \$34,000 would be about 1/500 or .2%. This is a very low percentage increase.

County Exhibits #7 though #13 show that the counties of Rusk, Barron, Polk, Washburn, Bayfield and Ashland have positive fund balances at the start of the year 1983. The only exception is Burnett where it shows a negative fund balance of \$166,604, which has considerably less than the \$934,000 negative fund balance in Douglas County at the start of the year 1983.

County Exhibit #14 shows that department heads are personally responsible for overdrafts. Comptroller Kroll stated in his testimony that department heads were not allowed to exceed their 1983 budgets without authorization from the Douglas County Board Finance Committee.

County Exhibit #15 shows that Douglas County ranks number five in the state in percent of taxes delinquent. While Sawyer, Burnett and Bayfield Counties have a higher percentage of taxes delinquent, none of these counties has the same financial problems as does Douglas County.

Ever assuming arguendo that the arbitrator accepts every fact and contention made by the County in these Exhibits without recognizing the fallacy of some of them, the County still failed to establish the inability to pay for the Union's offer. In fact, Mr. Kroll was unable to explain how the County, which claimed the inability to make any wage or fringe benefit increases at all, would be able to pay on December 31, 1983, for other settlements with other bargaining units with bonuses payable on that day. If the County can pay bonuses on December 31, 1983, for other union employees, it certainly has the financial ability (albeit by layoff, if necessary) to fund the Union's proposal. The County's inability to pay argument would have been much stronger had it not negotiated bonus settlements or had the Union allowed the County to modify its final position in accordance with the consent awards. By proposing a freeze on all wage and fringe benefits for 1983, the County must now convince the arbitrator that its 1982 level is as comparable to the wage and fringe benefits granted to comparables in 1983.

The County contends that the comparables used by the Union and even its own comparables used in its presentation are invalid, since all of the comparables were in much better financial condition entering the year 1983.

The Douglas County Sheriff's Department is physically located in the same facility as is the City of Superior Police Department. While Union members have jurisdiction over both rural and city areas within Douglas County, Superior officers simply deal with problems within the City of Superior. Both departments have parallel functions in all regards and regularly interchange information. In fact, deputies in Douglas County have expanded functions and duties as compared to city police officers because of greater geographical area to cover, and the greater duties relating to transfers of prisoners and apprehensions of individuals involved. Further, Douglas County deputies have more dangerous duties than the city police officers due to the greater geographic area and the use of one-man units at night as opposed to two-men units, which are used by the city.

The Douglas County Sheriff's Department also interacts on a regular basis with detectives and tactical unit officers from the City of Duluth Police Department, which is just across the high bridge from the City of Superior.

Finally, Douglas County deputies also interact with St. Louis County Sheriff's Department officers when serving warrants and performing similar duties. St. Louis County contains the City of Duluth.

In fact, the entire Duluth, Superior, Douglas and St. Louis County area is one standard metropolitan statistical area.

Because of this regular and routine interaction between the parties, it is the Union's contention that the appropriate comparables here are St. Louis County, the City of Duluth and the City of Superior.

Duluth and St. Louis County should be rejected as comparables because the employers and employees negotiate under completely different rules and laws than those existing in the state of Wisconsin. Moreover, is the financial condition of the City of Duluth and St. Louis County as compared to Douglas County. Exhibits #1 and #2 enclosed in the County's brief show that the City of Duluth and St. Louis County are both in good financial condition.

Union Exhibit #1, an arbitration award by David B. Johnson, dated March, 1977, was introduced by the Union to show that the City of Superior and not other counties in Wisconsin should be considered as the major comparable by the arbitrator.

"While I recognize that these are both important considerations, I believe that it is even more important to arrive at a settlement of this dispute that will provide a basis for coordinating the employment conditions of the Deputy Sheriffs with those of the Superior Police Department. The two forces occupy the same building and cooperate with one another in the performance of their work in separate but adjacent jurisdictions. It is more important that this decision proceed in the direction of that objective than that it try to achieve some kind of equity with settlements in collective bargaining units of other County employees. On the basis of similarity in duties, the necessity of working together, and possible interchange ability of personnel there is more reason to compare the employment conditions of the Deputy Sheriffs with those of the Superior Police Officers than with the County Highway or Hospital Employees...." (pp. 10-11).

The County calls the arbitrator's attention to page 12 of the above-cited arbitration, where Arbitrator Johnson states in paragraph 1,

"Although the general economic distress of the area was emphasized by the County, there was no significant issue of ability-to-pay raised, and, in any event, the difference between the two offers is not great enough to make that an issue."

There is a significant difference between the County's and Union's final offers and the Employer does make an inability to pay argument. The arbitrator, however, has rejected the inability to pay argument. Although the two offers are significantly apart, the logic and reasoning of Arbitrator Johnson's award must be given preential value. Accordingly, the City of Superior is considered a valid comparable.

The police in the City of Superior received a 3% wage increase effective January 1, 1983, a 4% wage increase effective July 1, 1983, the reclassification of one position to a higher rate, and an agreement that the employer would pay 100% of the single health insurance premium and 95% of the family premium pursuant to an arbitration award rendered by Neil M. Gundermann on September 24, 1983. See Joint Exhibit #6.

Page 13 of County Exhibit #1 lists the comparables suggested by the County if the arbitrator rejects the inability to pay argument, as is the case here. They include the counties of Polk, Rush, Ashland, Sawyer, Bayfield, Barron, Burnett and Washburn and the City of Superior.

Page 13 shows that Douglas County compares favorably using 1982 wages and benefits to the comparable cities and counties using 1983 wages and benefits. In addition, if the arbitrator adds the provision for educational credits (average employee at Douglas County has an associate degree, which is the equivalent of 60 credits or \$.23 per hour), we find an improvement in Douglas County's position, which is more than the average of the County's comparables.

It must be noted, however, that the County's comparables are not true comparisons because all of the comparables are smaller in population to Douglas County (44,421). In fact, the counties of Rush, Ashland, Sawyer, Bayfield, Burnett and Washburn are less than half of the population of Douglas County. Accordingly, the only valid comparables are Polk and Barron Counties and the City of Superior. If the arbitrator uses these comparables, the average wage and benefit total is \$12.39 per hour, which is substantially less than \$11.68 per hour (including educational credits of \$.23 per hour) under the County's offer. Moreover, even under the Union's position, Douglas County still does not meet this average.

The Union requests the \$.25 per hour adjustment for matrons in order to bring them more nearly into parity because the duties of the matrons are identical to the male jailer duties within their respective jail areas. The disparity is currently more than \$2.00 per hour.

The testimony reveals that the 1982-83 collective bargaining agreement between the Parties was agreed upon after the Union made a strong effort to obtain parity for the female matrons. In exchange for the County's moral and oral commitment to equalize these wages, the Union agreed to a two-year agreement with a wage and health insurance reopener. When the Union sought absolute parity during negotiations, the County rejected that proposal. The Union now is only requesting a minimal \$.25 per hour additional increase to bring the matrons closer to the rate paid to the male jailer. This request is reasonable in light of the County's financial condition.

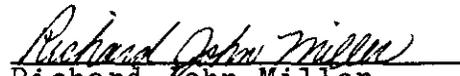
The Union is attempting to institute a new benefit for the employees. They are proposing an \$11.87 cap on employee contributions to health insurance. The contract currently provides for a cap on employer contribution. If this was the only issue before the arbitrator, the County's position would be sustained due to lack of convincing evidence. This, however, is not the case here. The arbitrator is faced with deciding two other issues in addition to health insurance. The evidence clearly established that the Union's position must prevail under the wage issue and the issue dealing with matrons. Since the arbitrator must under state law chose only the final offer of one party, the offer of the Union best satisfies the statutory factors as previously discussed.

Further support for the Union's position is achieved after review of the Consumer Price Index, which must be considered by the arbitrator under Section 111.77(6)(e), Wis. Stats. On page 16 of County Exhibit #1, the Consumer Price Index increased 3.73% in 1982. This increase clearly is closer to the Union's offer than the freeze of wages and fringe benefits proposed by the County.

In conclusion, the Union's final offer regarding wages, including the matrons, and health insurance is more reasonable in light of the factors under state law.

AWARD

Based on the above, the Union's final offer best satisfies the interest of the compulsory binding arbitration law and also best satisfies the factors required to be considered by the arbitrator under such law. Therefore, the Union's final offer shall be incorporated into the 1983 Collective Bargaining Agreement effective January 1, 1983 to December 31, 1983.


Richard John Miller

Dated this 22nd day of December, 1983

New Hope, Minnesota